



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 09 2009

REPLY TO THE ATTENTION OF:

(AE-17J)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Scott E. Irvine  
Metal Recycling Systems, Inc.  
3000 West 139<sup>th</sup> Street  
Blue Island, Illinois 60406

RE: Metal Recycling Systems, Inc.

Consent Agreement and Final Order

Dear Mr. Irvine:

I have enclosed two copies of the Consent Agreement and Final Order (CAFO) to resolve this civil administrative action without resort to hearing. If you agree with the terms and conditions of the CAFO, please have the appropriate official sign both copies and return both copies to me. After we receive the signed copies, we will sign both copies, file the CAFO with the Regional Hearing Clerk and issue a copy to you.

If you have any questions on this matter, please do not hesitate to contact me at [schnieders.kathleen@epa.gov](mailto:schnieders.kathleen@epa.gov) or (312) 353-8912.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathleen", is written over a horizontal line.

Kathleen Kelly Schnieders  
Associate Regional Counsel

Enclosure

yellow

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Metal Recycling Systems, Inc.  
Blue Island, Illinois

Respondent

) Docket No.  
)  
) Proceeding to Assess a Civil Penalty under  
) § 113(d) of the Clean Air Act, 42 U.S.C.  
) § 7413(d)  
)  
)

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced under § 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).
2. Complainant is the Director of the Air and Radiation Division, U. S. Environmental Protection Agency, Region 5.
3. Respondent is Metal Recycling Systems, Inc. (MRS), a corporation doing business in Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b) (2004).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty and agrees to comply with the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. MRS admits the jurisdictional allegations in this CAFO, but does not admit the factual allegations in this CAFO.
8. MRS waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. The regulations for the protection of Stratospheric Ozone are a result of the 1997 Montreal Protocol on Substances that Pollute the Ozone Layer (Montreal Protocol), which provided for the world-wise phase out of the production and consumption of ozone-depleting substances, such as chlorofluorocarbons (CFCs). The provisions of the Montreal Protocol were codified into law in Title VI of the CAA, 42 U.S.C. § 7671, as part of the 1990 CAA Amendments.
10. Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of small appliances, room air conditioning, motor vehicle air conditioners (MVACs), or MVAC-like appliances became subject to a portion of the regulations for the Protection of Stratospheric Ozone located in 40 C.F.R. Part 82, Subpart F. The Subpart F regulations contain Recycling and Emissions Reduction requirements for ozone depleting substances. The purpose of the regulations is to “reduce emission of class I and class II refrigerants to the lowest achievable level during the service, maintenance, repair, and disposal of appliances in accordance with Section 608 of the Clean Air Act.” 40 C.F.R. § 82.150(a). Among the practices required by the regulations is the requirement that recyclers who take the final step in the disposal process:
  - a. Recover any remaining refrigerant from the appliance in accordance with specific procedures described in 40 C.F.R. § 82.156, or
  - b. Verify that the refrigerant has been evacuated from the appliance or shipment of appliances previously. Such verifications must provide a signed statement from the person from whom the appliance or shipment of appliances is obtained, that all refrigerant that had not leaked previously has been recovered from the appliances or shipment of appliances. This statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered or a contract that refrigerant will be removed prior to delivery. 40 C.F.R. § 82.156(f).
  - c. In addition, the signed statements obtained pursuant to 40 C.F.R. § 82.156(f)(2) must be maintained on-site by the entities that dispose of appliances for a minimum of three years. 40 C.F.R. §§ 82.166(i) and (m).

### **Enforcement**

11. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a), authorizes the Administrator to initiate an enforcement action whenever the Administrator finds, among other things, that any person has violated or is in violation of a requirement or prohibition of Title VI of the Act, or any rule promulgated, issued or approved under Title VI of the Act.
12. The Administrator may assess a civil penalty of up to \$27,500 per day of violation of the Act up to a total of \$220,000 for violations that occurred from January 31, 1997 through March

15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 and before January 11, 2009, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

13. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
14. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

### **Factual Allegations**

15. MRS owns and operates a scrap recycling facility at 3000 West 139<sup>th</sup> Street, Blue Island, Illinois.
16. During its January 29, 2008, inspection, EPA was informed that MRS receives approximately 10-15 refrigerant-containing appliances per week of operation. MRS operates five-and-a-half days a week.
17. MRS has regularly received and processed various "small appliances," as defined in 40 C.F.R. § 82.152, including air conditioners and refrigerators which once contained class I and class II refrigerants, as part of its metal recycling operations at the Facility.
18. At the time of the inspection, EPA was informed that MRS does not recover refrigerant from appliances that are brought to the facility.
19. At the time of the inspection, EPA was informed that MRS does not require verification statements attesting that the refrigerant has been evacuated and recovered prior to delivery of the appliance(s) to MRS.
20. On February 20, 2008, EPA issued a Section 114 information request to MRS to verify that MRS did not collect verification statements nor own recovery equipment.
21. In its response dated March 10, 2008, MRS verified that it did not collect verification statements nor did it own recovery equipment at the time of the inspection.
22. On March 20, 2008, EPA issued a Finding of Violation (FOV) to MRS for violating the Stratospheric Ozone Standards.
23. On April 17, 2008, EPA met with MRS in a Section 113 Conference to discuss the violations alleged in the FOV and any actions the company had taken to come into compliance.

24. Following the 113 Conference, MRS implemented a system to collect verification statements in compliance with the regulations.

### **Violations**

25. MRS did not obtain signed statements in accordance with 40 C.F.R. § 82.156(f)(2) from each person who supplied small appliances to MRS, verifying that all refrigerant had been recovered from such small appliances in accordance with 40 C.F.R. § 82.156(g) or (h) prior to delivery of the appliances to MRS. In addition, MRS did not maintain copies of any such verification statements in accordance with 40 C.F.R. § 82.166(i).
26. MRS did not attempt to recover refrigerant, if any, from the small appliances in accordance with the requirements of 40 C.F.R. 82.156(g) or (h) prior to processing such small appliances at the Facility.
27. The acts or omissions described in paragraphs 25 and 26, above, constitute violations of 40 C.F.R. 82.156(f) and 82.166(i).

### **Terms of Settlement**

#### **Civil Penalty**

28. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, MRS' agreement to perform a Supplemental Environmental Project (SEP), and information that MRS has submitted, EPA has determined that an appropriate civil penalty to settle this action is \$30,000.
29. MRS must pay the \$30,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America" within 30 days after the effective date of this CAFO to the following address:

US checks sent by regular US Postal Service mail:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

US checks in US dollars sent by Fed Ex and other non-US-Postal-Service express mail:

U.S. Bank  
Government Lockbox 979077

US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

30. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent must write the case docket number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Kathleen K. Schnieders, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

31. This civil penalty is not deductible for federal tax purposes. Moreover, for federal income tax purposes, MRS agree that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
32. If MRS does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
33. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. MRS will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. MRS will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

### **Supplemental Environmental Project**

34. MRS agrees to complete a SEP designed to further protect the environment and public health by reducing emissions of CFCs to the environment and promoting compliance with the CFC Regulations among those who bring appliances to its facility.
35. MRS must complete the Intact Appliance Pilot Program, as detailed in Attachment A, the SEP Scope of Work (SOW), which is incorporated by reference into this CAFO.
36. MRS' total expenditures must not be less than \$ 30,000 on the project in conformance with the SOW. No funds counted toward completion of the SEP shall be deductible for federal tax purposes.
37. MRS must submit a SEP Completion Report to EPA within 60 days of completion of the project, in accordance with the deadline set forth in the SOW. This Completion Report must contain the following information:
  - a) Detailed description of the SEP as completed;
  - b) Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services; and
  - c) Certification that MRS has completed the SEP in compliance with this CAFO.
38. MRS must submit all SEP notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Kathleen Schnieders, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511
39. In each report that MRS submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by a responsible corporate official or an authorized designee:

I certify that I am familiar with the information in this document and that,

based on my inquiry of those individuals responsible for obtaining the information; the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

40. Following receipt of the SEP Completion Report, as described in paragraph 37 above, EPA will notify MRS in writing within 30 days of receipt of each report that:
- a) It has satisfactorily completed the SEP and the SEP Completion Report;
  - b) There are deficiencies in the SEP as completed or in the SEP Completion Report and EPA will give MRS 30 days to correct the deficiencies; or
  - c) It has not satisfactorily completed the SEP or the SEP Completion Report, and EPA will seek stipulated penalties under paragraph 41, below.

Alternatively, if subparagraph (b) above has been invoked, EPA will timely notify MRS in writing, that:

- d) It has satisfactorily cured deficiencies in the SEP or the SEP Completion Report; or,
- e) It has failed to cure deficiencies in the SEP or the SEP Completion Report within the allotted time, and EPA will seek stipulated penalties under paragraph 41, below.

MRS agrees that failure to submit a SEP Completion Report shall be deemed a violation of this CAFO, and MRS shall become subject to stipulated penalties pursuant to paragraph 41.

41. In the event that MRS fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in paragraph 35 above and/or to the extent that actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 36 above, and has failed to cure any deficiencies as per paragraph 40 above, MRS shall be liable for stipulated penalties to the United States as follows:
- a) Except as provided in subparagraph (b) immediately below, if MRS halts or abandons the SEP or fails to perform as required by this CAFO and the SOW, MRS must pay a stipulated penalty in the amount of 1.25 times the total projected cost, as per the SOW.
  - b) If MRS completes the SEP in a timely manner, as required by this CAFO and the SOW, but fails to spend at least 90% of the amount specified in paragraph 36 above, MRS must pay a stipulated penalty in the amount of \$3,000.
  - c) If MRS fails to comply with the schedule in Attachment A to this CAFO for implementing the SEP or fails to submit timely the SEP Completion Reports required in paragraph 37, MRS must pay a stipulated penalty for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1 <sup>st</sup> through 20 <sup>th</sup> day
\$ 500	21 <sup>st</sup> through 30 <sup>th</sup> day
\$ 750	31 <sup>st</sup> day and beyond.



42. EPA's determination of whether MRS has completed the SEP as required by the CAFO and the SOW will bind MRS. If MRS disputes EPA's initial determination regarding completion of a SEP, MRS must notify EPA in writing within 10 days of receipt of EPA's determination. Thereafter, EPA's final determination of whether MRS completed the SEP as required by the CAFO and the SOW will be made by the EPA, Region 5, Air and Radiation Division Director, after considering MRS' position.
43. MRS must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. MRS will use the method of payment specified in paragraphs 29 and 30, above, and will pay interest and nonpayment penalties on any overdue amounts.
44. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:
- a) MRS must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), MRS' past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. MRS must take all reasonable actions to avoid or minimize any delay. If MRS fails to notify EPA according to this paragraph, MRS will not receive an extension of time to complete the SEP.
  - b) If the parties agree that circumstances beyond the control of MRS caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
  - c) If EPA does not agree that circumstances beyond the control of MRS caused or may cause a delay in completing the SEP, EPA will notify MRS in writing of its decision and any delays in completing the SEP will not be excused. If MRS disputes EPA's initial determination regarding delay, MRS must notify EPA in writing within 10 days of receipt of EPA's determination. Thereafter, EPA's final determination of whether circumstances beyond the control of MRS caused or may cause a delay in completing the SEP will be made by the EPA, Region 5, Air and Radiation Division Director, after considering MRS' position.
  - d) MRS has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.
45. MRS hereby certifies that, as of the date of this CAFO, it is not required to perform or develop this SEP by any federal, state, or local law or regulation; nor is MRS required to perform or develop this SEP by any other agreement, grant, or as injunctive relief in this or any other case. MRS further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP.

### **Final Statement**

46. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.
47. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
48. This CAFO does not affect MRS' responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 46 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.
49. MRS certifies that it is complying fully with the applicable requirements of the CAA.
50. This CAFO constitutes an "enforcement response" as that term is used in "EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine MRS' "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).
51. The terms of this CAFO bind MRS, and its successors, and assigns.
52. Each person signing this consent agreement certifies that he or she has the authority to sign this CAFO for the party whom he or she represents and to bind that party to its terms.
53. Each party agrees to bear its own costs and attorneys' fees in this action.
54. This CAFO constitutes the entire agreement between the parties.

**CONSENT AGREEMENT AND FINAL ORDER**  
**Metal Recycling Systems, Inc.,**  
**Docket No.**

**U.S. Environmental Protection Agency, Complainant**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cheryl L. Newton  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency

**CONSENT AGREEMENT AND FINAL ORDER**  
**Metal Recycling Systems, Inc.,**  
**Docket No.**

**Metal Recycling Systems, Inc., Respondent**

\_\_\_\_\_  
Date

**CONSENT AGREEMENT AND FINAL ORDER**

**MRS International, Inc.**

**Docket No.**

**Final Order**

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

**CONSENT AGREEMENT AND FINAL ORDER**  
**Metal Recycling Systems, Inc.,**  
**Docket No.**

**CERTIFICATE OF SERVICE**

I, Betty Williams, certify that I hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, the original and one copy of the Consent Agreement and Final Order, docket number CAA-05-2009-\_\_\_\_. Further, I certify that I mailed correct copies of the Consent Agreement and Final Order, by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent by placing them in the custody of the United States Postal Service addressed as follows:

on the \_\_\_\_ day of \_\_\_\_\_, 2009.

Scott E. Irvine  
Metal Recycling Systems, Inc.  
3000 West 139<sup>th</sup> Street  
Blue Island, Illinois 60464

\_\_\_\_\_  
Betty Williams, Secretary  
AECAS (IL-IN)

CERTIFIED MAIL RECEIPT NUMBER: \_\_\_\_\_

SIGN-OFF FOR THE OFFICE OF REGIONAL COUNSEL									
	Attorney Paralegal	Section Secretary	Section Chief	Branch Secretary	Branch Chief	RC/DRC Secretary	DRC	RC	Other
Initial	KKS		CS					B. A. [Signature]	
Date	9.7.09		9/3/09					9/14/09	

RAK

**Attachment A****SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)****SCOPE OF WORK (SOW) FOR  
METAL RECYCLING SYSTEMS, INC.'S  
INTACT APPLIANCE PILOT PROGRAM**

For a period of one year beginning from the date the Consent Agreement and Final Order (CAFO) is entered by the Court, Metal Recycling Systems, Inc. (MRS) shall have in place its Intact Appliance Pilot Program as set forth below:

As an incentive to its customers to keep refrigerant lines intact in appliances, MRS will increase its applicable going rate for sheet iron by a total of \$10.00 per net ton for any single load of sheet iron that contains at least one refrigerator (or other unit potentially containing CFCs) with the copper lines intact, but no refrigerators with the lines severed.

MRS will advertise this incentive in order to encourage the peddlers/scrap sellers to deliver refrigerators with the lines intact. In return, the peddlers/scrap sellers will receive a bonus for their entire load of sheet iron, not just the refrigerator. Advertisement will be in the form of signage, word of mouth and perhaps in the local newspaper.

MRS will use its CFC recovery equipment to attempt to recover any refrigerant remaining in the units.

MRS will maintain the following records:

- (1) CFC verifications for all refrigerators purchased where CFCs had been previously evacuated;
- (2) A tally of the refrigerators purchased on the incentive program described above;
- (3) The total amount of scrap purchased on the incentive program described above;
- (4) Records regarding recovery, recycling or disposal of the CFCs by Metal Recycling; and



- (5) The cost of the program to MRS including the increase in payment for the scrap, the CFC recovery equipment, CFC disposal (if any), labor, recordkeeping, etc.

Within 60 days of completion of the Intact Appliance Pilot Program, MRS will submit its SEP Completion Report to EPA pursuant to the terms of the Supplemental Environmental Project outlined in the CAFO. MRS will comply with all other provisions of the SEP as outlined in the CAFO.

**Region 5 files a Consent Agreement and Final Order to commence and conclude case against Metal Recycling Systems, Inc., Blue Island, Illinois.**

On \_\_\_, Region 5 filed a Consent Agreement and Final Order (CAFO) simultaneously commencing and resolving an administrative penalty action against Metal Recycling Systems, Inc. (MRS) for alleged violations of the Regulations for the Protection of Stratospheric Ozone (CFC Regulations), found at 40 C.F.R. Part 82, Subpart F. Specifically, MRS, a scrap recycler, violated the regulations by failing to either collect verification statements for the appliances it accepted or attempting to recover any refrigerant from the appliances. The violations were discovered through an inspection of the facility.

MRS has since come into compliance. In settlement, in addition to paying a cash penalty of \$ 30,000, MRS will undertake a one-year Intact Appliance Pilot Program as a Supplemental Environmental Project (SEP). To implement the Pilot Program, MRS will offer an increased price for intact appliances as incentive to those who might otherwise cut the refrigerant lines, thus illegally and unnecessarily venting the refrigerant contained within. MRS will use its CFC recovery equipment to properly collect refrigerant from the appliances it accepts and track the number of appliances processed through the program. (Contact: Kathleen Schnieders, 312-353-8912)